

MEMORANDUM

DATE: September 25, 2007

TO: Ms. Sharon L. Summers, DMMA
Policy and Program Development Unit

FROM: Daniese McMullin-Powell, Chairperson
State Council for Persons with Disabilities

RE: 11 DE Reg. 274 [Long Term Care Annuity Regulation]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Medicaid and Medical Assistance's (DMMA) proposal to amend its annuity regulations published as 11 DE Reg. 274 in the September 1, 2007 issue of the Register of Regulations. As background, in June 2007, DMMA published a proposed 1-sentence amendment to its regulations covering treatment of annuities in the Medicaid LTC program. SCPD endorsed the concept of the standards which ostensibly eliminated a requirement that annuities be sold by applicants for Medicaid LTC services. The Division has now republished a comprehensive revision to its annuity regulation. The impetus behind the new proposal is issuance of the attached July 23, 2007 CMS policy letter; recognition that the version of the regulation published in June was incomplete; and further review by DMMA staff. SCPD has the following observations.

First, the proposed regulation generally conforms to the CMS guidance and often incorporates language from the letters verbatim.

Second, §20330.10D1 merits amendment. It recites as follows: "The issuer of any annuity will be notified of the State's rights as a preferred remainder beneficiary". The use of passive voice in this sentence makes it unclear if the State or the applicant provides the requisite notice to the issuer of the annuity. Compare DMMA Final LTC Promissory Note & Life Estate Reg. [11 DE Reg. 314, 315 (September 1, 2007) [substituting active for passive voice for clarity]. The July 27, 2006 CMS policy letter contemplates that the State will issue notice to the issuer of the annuity:

The State must also notify the issuer of any annuity disclosed for purposes of section 1917(c)1)(F) of the State's rights as a preferred remainder beneficiary.

At §I.B.

Under the new section 1917(c)(see section I.B above) the State must notify the issuer of the annuity of the State's right as the preferred remainder beneficiary.

At §II.B.

For these reasons, it would be preferable to affirmatively recite that the State will issue the requisite notice.

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our observations on the proposed regulation.

cc: Mr. Harry Hill
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council

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